



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2013-0402]

RIN 1625-AA08

Special Local Regulations for Marine Events, Pleasantville
Aquatics 15th Annual 5K Open Water Swim, Intracoastal
Waterway; Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the Intracoastal Waterway in Atlantic City, NJ. This special local regulation will restrict vessel traffic on a portion of the Intracoastal Waterway from operating while a swim event is taking place. This special local regulation is necessary to protect the swimmers from the hazards associated with passing vessel traffic.

DATES: This rule will be effective from 9 a.m. until 12 noon on June 9, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0402]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Corrina Ott, Chief Waterways Management, Sector Delaware Bay, Coast Guard; telephone (215)271-4902, email corrina.ott@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202)366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms:

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative

Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to provide for the safety of life and property in the navigable water. In addition, publishing an NPRM is impracticable given that the final details for this event were not received by the Coast Guard with sufficient time for a notice and comment period to run before the start of the event. Thus, delaying this rule to wait for a notice and comment period to run would be impracticable and would be contrary to the public interest by inhibiting the Coast Guard's ability to protect the swimmers from the hazards associated with maritime traffic.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impracticable and contrary to the public interest.

B. Basis and Purpose

On June 9, 2013, swimmers will be in the waters of the Intracoastal Waterway for the Pleasantville Aquatics 15th Annual 5K Open Water Swim. The Captain of the Port, Sector Delaware Bay, has determined that this rule is necessary to ensure safety of life on the navigable waters of the United States during the open water swim.

C. Discussion of Rule

On June 9, 2013, Pleasantville Aquatics will host a 5K swimming race between Albany Avenue and Dorset Avenue bridges. The race will be conducted in two waves beginning at 9 a.m. A shorter 2K race will also be conducted in two waves beginning at 11 a.m.

To mitigate the risks associated with the swim race, the Captain of the Port, Sector Delaware Bay has established a special local regulation in the vicinity of the swim sites. The regulated area will encompass all waters shoreline to shoreline starting at 39° 20'31"N, 74° 28'41"W North to 39° 21'52"N, 74° 26'48"W East to 39° 21'51"N, 74° 26'43"W South to 39° 20'30"N, 74° 28'40"W West to 39° 20'31"N, 74° 28'41"W. The regulated area will be effective and enforced from 9 a.m. to 12 p.m. on June 9, 2013.

Entry into, transiting, or anchoring within the regulated area is prohibited unless authorized by the Captain of the Port, Sector Delaware Bay, or her representative. The Captain of the Port, Sector Delaware Bay, or her representative may be contacted via VHF channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts vessel traffic from operating within the safety zone on the navigable waters of the Intracoastal Waterway, Atlantic City, NJ, the effect of this regulation will not be significant due to the limited duration that the safety zone will be in effect. The enforcement window will be for three hours. The race has been conducted in years past, as

this is the 15th annual event, therefore, mariners should expect this event to occur.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Intracoastal Waterway between 9 a.m. and 12 p.m. on June 9, 2013.

This regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will only be enforced for a short period of time. In addition, this is an annual event that mariners who frequently navigate these waters are familiar with. In the event that this special local

regulation affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Delaware Bay, to transit through regulated area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant

effect on the human environment. This rule involves the establishment of a safety zone for a duration of less than one week in order to ensure the safety of swimmers. This rule is categorically excluded, under figure 2-1, paragraph 34(h), of the Instruction because it involves the establishment of a special local regulation. An environmental analysis checklist and a categorical exclusion determination are not required. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. Add temporary § 100.35T05-0402, to read as follows:

§ 100.35T05-0402 Special Local Regulations for Marine Events, Pleasantville Aquatics 15th Annual 5K Open Water Swim, Intracoastal Waterway; Atlantic City, NJ.

- (a) Location. The regulated area will encompass all waters shoreline to shoreline starting at 39° 20'31"N, 74° 28'41"W North to 39° 21'52"N, 74° 26'48"W East to 39° 21'51"N, 74° 26'43"W South to 39° 20'30"N, 74° 28'40"W West to 39° 20'31"N, 74° 28'41"W.
- (b) Enforcement period. This rule will be enforced from 9 a.m. until 12 noon on June 9, 2013.
- (c) Regulations. All persons are required to comply with the general regulations governing special local regulations in 33 CFR part 100.
- (1) No person or vessel may approach or remain within 100 yards of any swimmer or safety craft within the regulated area during the enforcement period of this regulation unless they are officially participating in the 15th Annual 5K Open Water Swim event or are otherwise authorized by the Captain of the Port Sector Delaware Bay or her Designated on scene Patrol Commander.
- (2) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given.

Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

- (3) The Coast Guard Patrol Commander may delay, modify, or terminate the event, at any time if it is deemed necessary for the protection of life or property.
- (4) Only event sponsor designated participants and official patrol vessels are allowed to enter the regulated area.
- (5) Spectators are allowed inside the regulated area only if they remain within a designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.
- (6) To seek permission to transit the regulated area, the Captain of the Port or her representative can be contacted via Sector Delaware Bay Command Center (215)271-4940 or via VHF radio on channel 16.
- (7) This section applies to all vessels wishing to transit through the regulated area except vessels that are engaged in the following operations:
 - (i) Enforcing laws;
 - (ii) Servicing aids to navigation, and

(iii) Emergency response vessels.

- (8) Each person and vessel in the regulated area shall obey any direction or order of the Captain of the Port;
- (9) The Captain of the Port may take possession and control of any vessel in the regulated area;
- (10) The Captain of the Port may remove any person, vessel, article, or thing from the regulated area;
- (11) No person may board, or take or place any article or thing on board, any vessel in the regulated area without the permission of the Captain of the Port; and
- (12) No person may take or place any article or thing upon any waterfront facility in the regulated area without the permission of the Captain of the Port.

(d) Definitions. The Captain of the Port means the Commanding Officer of Sector Delaware Bay and the "on-scene representative" of the Captain of the Port, Sector Delaware Bay is any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(e) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the regulated by Federal, State, and local agencies.

Dated: May 20, 2013

K. MOORE,
Captain, U.S. Coast Guard
Captain of the Port Sector Delaware Bay

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